

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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UNITED STATES OF AMERICA, : Case No. 1:20-cr-00142-1
:
Plaintiff, : **Jury Trial, Day 2**
: Wednesday, June 22, 2022
- v - :
: 9:00 a.m.
ALEXANDER SITTENFELD, a/k/a :
"P.G. Sittenfeld," :
:
Defendant. : Cincinnati, Ohio

* * *

EXCERPTED PROCEEDINGS - TESTIMONY OF PHILIP DENNING

BEFORE THE HONORABLE DOUGLAS R. COLE, DISTRICT JUDGE

* * *

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1 P R O C E E D I N G S

2 (In open court at 3:04 p.m.)

3 * * *

4 THE COURT: Does the government intend to call
5 another witness?

6 MR. SINGER: Yes, Your Honor. The government calls
7 Phil Denning.

8 THE COURT: Very good.

9 (Government witness, Phil Denning, sworn.)

10 MR. SINGER: May I proceed, Your Honor?

11 THE COURT: You may.

12 DIRECT EXAMINATION

13 BY MR. SINGER:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Can you please state your name and spell it for the jury,
17 please.

18 A. Yes. My name is Philip Denning, P-h-i-l-i-p,
19 D-e-n-n-i-n-g.

20 Q. Mr. Denning, where do you work?

21 A. Where do I work now?

22 Q. Yeah.

23 A. I work for the Port of Greater Cincinnati Development
24 Authority.

25 Q. What is the Port of Greater Cincinnati Development

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1 Authority?

2 A. The port is a quasi-public economic development agency
3 which focuses on redevelopment of blighted property, the
4 creation of jobs and, specifically, industrial jobs in
5 Hamilton County.

6 Q. Is it generally called the port?

7 A. The port, yes.

8 Q. So if I call it "the port," you understand what I'm
9 talking about?

10 A. Yes.

11 Q. And what is your role with the port?

12 A. I'm an executive vice president, and I focus most of my
13 time on neighborhoods and neighborhood development.

14 Q. Can you describe what you do as an executive vice
15 president with the port?

16 A. Certainly. The -- one of the oddities of the port is
17 that we have a few entities.

18 For example, one of the managed entities that we take
19 care of is the Hamilton County Land Bank which you may have
20 heard about, and it focuses on blighted and vacant properties.

21 And, in addition to management of the land bank, I focus
22 on -- I manage a team of 10 or 15 staff that focus on
23 commercial development and residential development, new
24 construction, and affordable housing.

25 Q. Can you just describe what the land bank does?

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1 A. Yes. The land bank is a separate entity created by the
2 State of Ohio that has its own board. And the land bank's
3 role, really, is to take abandoned property and move it back
4 to productive use and find new investment for it.

5 Q. Prior to working with the port, where did you work?

6 A. I worked for the City of Cincinnati, and specifically the
7 department of community and economic development.

8 Q. What did you do with the community and economic
9 development department?

10 A. My most recent role there was the director of the
11 department. But I was in a number of varying roles over my
12 five or six years at the City of Cincinnati.

13 Q. And is that department generally called the economic and
14 development department?

15 A. Yes. And you may hear it short-handed to DCED.

16 Q. Thank you. And what does the economic development
17 department do?

18 A. The department of community and economic development has
19 a role that is, in a lot of ways, similar to the port, focused
20 on economic development, job creation, attracting private
21 investment. There are a number of neighborhoods and places
22 inside our county or city that don't experience growth or
23 investment, and so it's to change that.

24 Q. And how does it attempt to change that?

25 A. The City of Cincinnati has a variety of tools focused on

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1 real estate and job creation, job creation, tax credits, real
2 estate development incentives like tax abatements or tax
3 increment financing, and so using those tools and a few
4 others, essentially attracting investment to the city.

5 Q. Okay. Before we get into those, can you kind of walk us
6 through your employment history with the economic development
7 department?

8 A. Yes. I first started with the city -- I'm not going to
9 remember the year, off the top of my head, 2014 or 2015, and I
10 was an economic development associate, or senior economic
11 development officer, and my job was focused on brokering deals
12 in new investment on a smaller level.

13 After a year or so, there had been a fair bit of turnover
14 inside the department, and I was asked to lead a new group
15 called the major projects division, so I accepted that role.

16 And the major projects division was new to the city's
17 structure, and it focused on major projects and, specifically,
18 in downtown, Pendleton, and Over-the-Rhine. There was so much
19 investment happening, and challenges in some of those
20 neighborhoods that, you know, needed a new division. So I
21 took that position, major projects division manager.

22 Then after a year or so in that position, the director
23 position became available, and I was asked by the then manager
24 to continue leading the entire department.

25 Q. And can you describe what your role was as the director

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1 of the economic development department?

2 A. Yes. Fairly high number of items that were touching the
3 department; tax abatements for smaller buildings that are
4 being developed, tax increment financing, larger development
5 incentives for bigger projects, like the MLK exchange
6 development project.

7 The department of community and economic development also
8 managed the city's parking assets, so all of the on-street
9 meters, city-owned parking garages.

10 And then lastly, the City of Cincinnati is an entitlement
11 community, as designated by the federal government, which
12 means that the Department of Housing and Urban Development,
13 HUD, assigns CDBG funds annually to the city, in the
14 neighborhood of 16 or 17 million dollars, and the allocation
15 of those funds and their compliance is also managed by the
16 department.

17 Q. The 16 or 17 million dollars that you referenced from the
18 federal government, does that include the years 2018 and 2019?

19 A. Yes.

20 Q. And what year did you take on that role as the director
21 of economic development?

22 A. That would have been at the end of 2017, and the
23 beginning of 2018 was when I became interim in that position,
24 and was finally full-time director in early 2018.

25 Q. And how long did you remain in that role?

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1 A. About two years.

2 Q. And what position did you you take when you left as the
3 director of economic development?

4 A. My current position, as I stated, now is executive vice
5 president at the port.

6 Q. Okay. So you left the economic development department
7 job and went straight to the port; is that correct?

8 A. That's correct.

9 Q. During the time that you worked with the economic
10 development department, did a developer ever seek what's
11 called a development agreement with the city for a project?

12 A. Yes.

13 Q. Can you describe what a development agreement is?

14 A. Certainly. A development agreement is a longer contract
15 between a developer and the city for a smaller project that
16 would renovate a smaller building, something like a tax
17 abatement would suffice.

18 A development agreement is typically a more -- reserved
19 for a more complex transaction, and it states what the city is
20 going to provide to -- as an incentive for a project, and then
21 obligates the developer or business to provide something
22 typically in return.

23 So if the city is selling land to a developer, or giving
24 tax abatements, that would be described with some specificity.
25 And then if the city expected in return, they'll get a certain

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1 number of jobs, or they'll get a certain type of investment,
2 development investment or job creation outcome, that would be
3 specified, and there's obligations on both parties.

4 Q. Can you describe how a development agreement moves its
5 way through the city?

6 A. Yes. It is a fairly -- it can be a fairly lengthy path.
7 The majority of that time is inside -- just inside the
8 administration.

9 There is a project or a business that wants to invest or
10 grow inside the city, and they'd reach out to the development
11 department, typically a staff person that manages one
12 particular neighborhood and the affairs of that neighborhood.

13 And the first step after understanding what a developer
14 is interested in, they would submit an application. And that
15 application asks for quite a lot of information detailing what
16 the project is, what the expected investment will be, and how
17 many jobs will be created, and what the wages of those jobs
18 are.

19 And so there's a fair bit of negotiation back and forth,
20 information gathering from between the staff person and a
21 developer or a business.

22 Ultimately, once all the criteria has been met, that
23 development agreement process travels up to a division
24 manager, where some more questions are asked and vetting is
25 done. And then up to a deputy division manager or a deputy

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1 director, and then, ultimately, to the director for decision,
2 confirmation, other information, and then travels to -- from
3 the director to the city manager as -- once that is -- if it
4 is going to be recommended for incentive or for passage.

5 Q. You mentioned details of the project that the developer
6 provides.

7 What does the staff, and then broadly as it moves through
8 the department, what types of information is economic
9 development looking for from the development agreement
10 applications?

11 A. The staff person really -- you know, everyone up to the
12 director is looking for surety that, in exchange for a public
13 benefit, you know, limited public dollars, public tax dollars,
14 that the public is going to get something in return.

15 And so as part of that process, staff spend their time
16 making sure that if the developer, in this case a developer,
17 or it could be a business investment too, but the developer is
18 saying they want a tax abatement for a project, does the
19 developer have site control? Do they actually own the site
20 that they're talking about? Do they have sufficient financing
21 to complete the project? Not just, you know, I've got a
22 letter from a bank that says I'm interested but, you know,
23 with approval terms, you know, yes, you are approved for this
24 amount.

25 And then, certainly, does the developer or business have

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1 the, you know, demonstrated capacity to complete the project.

2 The last thing that the public wants to do is incentivize
3 a project that can't ultimately get completed for one of those
4 reasons or for others.

5 Q. You mentioned financing. What level of specificity is
6 the economic development department looking for in terms of
7 financing when it assesses a development agreement?

8 A. The department would typically ask for a number of
9 financial models from a proposing developer, a pro forma
10 demonstrating sources and uses of the development project, a
11 capital stack demonstrating every one of these sources of
12 capital that the developer has or will have in order to
13 finance the construction of the project, a 10-year financial
14 pro forma that shows, on a 10-year projection, how well the
15 project is going to cash flow.

16 And that's -- part of the negotiation is for every -- for
17 the most part, every incentive that the city is offering, you
18 know, it was a but for agreement; that is to say, but for the
19 investment of the public, would this project not happen, and
20 so looking at that pro forma to understand does this project
21 really actually need a tax abatement in order to commence
22 construction.

23 Q. I think you also mentioned capacity, capacity of the
24 developer. Is that what you meant by that?

25 A. Yes. Yes. If the developer has -- you know, if they've

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1 completed one small residential development, or one house, but
2 are then planning to -- proposing to develop a much larger
3 development, you know, that can be cause for concern about
4 does the developer have the capacity to complete.

5 Q. Ultimately, all the factors you just described, is there
6 one sort of underlying goal or analysis that you're looking
7 for in the economic development department to determine
8 whether or not a particular development agreement is
9 appropriate?

10 A. Actually, I've never -- I think --

11 Q. Can I ask it another way?

12 A. Yes.

13 Q. Is there an assessment as to whether or not the
14 development agreement will ultimately be a good decision for
15 the public?

16 A. Yes. That's probably -- a fair answer is that,
17 ultimately, if the public is making investments or spending
18 public funds, is what the public is getting in return worthy
19 of that investment, and will it result in -- with certainty in
20 the project happening, the jobs being created.

21 Q. All right. So what happens to a development after it
22 works its way through the economic development department,
23 what happens next?

24 A. Once the department of community and economic development
25 has vetted a project and has come to terms with the developer,

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1 there's a development agreement drafted.

2 That agreement is sent -- presented to the city manager,
3 considered by the city manager, and then at the discretion of
4 the city manager, forwarded to city council for consideration.

5 Q. And when the development agreement makes its way to city
6 council, what does city council do?

7 A. This may be different now than it was when I was at the
8 city; but, typically, it would be referred to -- that item
9 would be referred to a committee, and so it would go to a city
10 council -- bigger city council meeting, it would be referred
11 to one of the committees.

12 And the following week, something like the budget and
13 finance committee would consider that item, and ask questions
14 or discuss that item amongst themselves.

15 Q. And during the time you were at the economic development
16 department, what was city council's role when a developer was
17 seeking the development agreement through the economic
18 development department?

19 A. Typically at, for example, those budget and finance
20 committee meetings, city council people would ask questions of
21 the department about underwriting, or project need, or the
22 number of jobs being created or, you know, which neighborhood
23 a project is in.

24 And if the developer was present at the council meeting,
25 the council could ask -- avail the same questions of the

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1 developer.

2 Q. Great. All right. During the time you were with the
3 economic development department, do you recall whether a
4 developer ever sought to develop property located at 435 Elm
5 Street in downtown Cincinnati?

6 A. Yes.

7 Q. And do you recall who the developer was who was seeking
8 development of that property?

9 A. Yes. It was Mr. Chinedum Ndukwe.

10 Q. Okay. Can you describe the property located at 435 Elm
11 Street?

12 A. 435, the property at the intersection of Elm and Sixth
13 Street is, I would say, a three-story retail building, with a
14 four-story office above a portion of it.

15 At my time in the city, it was in fairly severe
16 disrepair. It was owned by the City of Cincinnati.

17 MR. SINGER: I'd like to show, for identification
18 purposes, USA Exhibit 2A. It's on the monitor right now.

19 THE WITNESS: I don't see anything on my monitor.

20 THE COURT: His monitor is not displaying. Scott,
21 are you turning it on?

22 MR. SINGER: Can we just scroll through those
23 photographs, 435 Elm Street.

24 Q. Do you recognize the images marked for identification
25 purposes as USA Exhibit 2A?

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1 A. Yes.

2 Q. And what is it? What are these photos of?

3 A. These are photos of the 435 Elm property.

4 Q. And how is it that you recognize these photographs as
5 that?

6 A. I have -- I've been in the building. And in my time at
7 the city, recognize them from that time.

8 Q. Are these true and accurate photographs of the property
9 located at 435 Elm Street during the time that you were at the
10 economic development department?

11 A. Yes.

12 MR. SINGER: Your Honor, the government moves USA 2A
13 into evidence.

14 THE COURT: Mr. Rittgers?

15 MR. C. MATTHEW RITTGERS: No objection, Your Honor.

16 THE COURT: USA 2A is admitted without objection.
17 Just for the record, it's a six-page document.

18 MR. SINGER: Permission to publish to the jury, Your
19 Honor?

20 THE COURT: You may, Mr. Singer.

21 Q. Can we start at page 1. Can you just describe what we're
22 looking at here?

23 A. Yes. This is the front door to the retail portion and
24 the entrance lobby of the building at 435 Elm.

25 Q. Page 2. What are we looking at here?

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1 A. This is the same building. It's an overall shot, shot
2 from the east.

3 Q. Okay. Next picture. And what is this a photograph of?

4 A. This is the same building, with the addition of the
5 public skywalk that connects across the top over the street.

6 Q. Do you see the 435 in the bottom left-hand corner there?

7 A. Yes.

8 Q. Is that the address of the building?

9 A. Yes.

10 Q. Next picture. What are we looking at here?

11 A. Same property, just zoomed in on the retail storefronts.

12 Q. Okay. Next picture. And here?

13 A. Same property from the north.

14 Q. Last one. What are we looking at?

15 A. 435 Elm.

16 Q. Thank you. Did Mr. Ndukwe have any interaction with the
17 economic development department related to 435 Elm Street?

18 A. Yes. Yes.

19 Q. Can you describe that, please?

20 A. Mr. Ndukwe was interested in developing the building, or
21 the site.

22 Q. Was your understanding, based on the information that
23 you'd received from Mr. Ndukwe, that he had a property
24 interest in the property at 435 Elm Street?

25 A. No.

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1 Q. Okay. Can you describe that?

2 A. Yes. And I'll be a little careful, because this is
3 currently in litigation between the port and Mr. Ndukwe.

4 But at the time of his interest in developing the
5 property, my recollection is that he did not have sufficient
6 interest in the property to be a -- have a developable
7 interest in the property.

8 Q. What was Mr. Ndukwe seeking from the economic
9 development -- or from the City of Cincinnati with regard to
10 435 Elm Street?

11 A. Mr. Ndukwe was seeking site control, the ownership of the
12 site.

13 Q. And do you recall when Mr. Ndukwe first started pursuing
14 an agreement with the city relating to 435 Elm Street?

15 A. Yes.

16 Q. And when was that?

17 A. The date, I'm not going to remember, but Mr. Ndukwe sent
18 a letter to the department specifically stating his interest
19 in entering into an MOU, or a memorandum of understanding,
20 with the department to redevelop the property.

21 Q. If I showed you that letter, would it refresh your
22 recollection as to the date of when the letter was sent?

23 A. Yes.

24 MR. SINGER: Your Honor, may I approach?

25 THE COURT: You may.

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1 Q. Can you review that?

2 A. Yes. So this is July 7, 2017.

3 MR. SINGER: May I approach, Your Honor?

4 THE COURT: You may.

5 Q. So did this refresh your recollection?

6 A. Yes. Thank you.

7 Q. Okay. When was that again?

8 A. That was July 7th, 2017.

9 Q. Thank you. You mentioned a memorandum of understanding.
10 What is a memorandum of understanding?

11 A. A memorandum of understanding, generally, is a
12 non-binding legal document with, essentially, promises about
13 something to be done.

14 Q. And in your experience, does the city typically enter
15 into a memorandum of understanding relating to large scale
16 development projects?

17 A. Not typically, no. That is a non-traditional path.

18 Q. And during the time you were at the economic development
19 department, did there come a time when Mr. Ndukwe was seeking
20 a development agreement with the city?

21 A. My understanding is that he was seeking a development
22 agreement, but that did not happen.

23 Q. Can you describe that?

24 A. Yes. As I mentioned earlier, the typical process at the
25 time was for staff within the department to enter into

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1 negotiations, conversations with an interested developer and,
2 essentially, fulfill all of the information needs they were
3 going to need to make and present to their superiors to make a
4 decision about when to sell or enter into a development
5 agreement, or something of that nature.

6 And staff within the department simply never reached the
7 point at which they were comfortable and had enough
8 information to recommend that a development agreement would be
9 their next course of action.

10 Q. Can you describe whether there were issues relating to
11 the 435 property, generally?

12 A. The property condition itself?

13 Q. Yes.

14 A. Yes. The property was in disrepair. The roof was
15 leaking. There were active tenants in the building who had,
16 you know, various issues with the property. Parts of the
17 building were failing. You know, the freight elevators were
18 failing, and the cables were rusting, and kind of a whole
19 number of issues related to the lack of upkeep and maintenance
20 over the 20 or 25 years prior by the then occupant, tenant.

21 Q. Were there any other issues with the property that made
22 entering a development agreement with any developer difficult?

23 A. Yes. In addition to those issues, kind of the condition
24 issues that I mentioned, the footprint of the building and the
25 design, the layout of the building was outdated and, all

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1 together, it typically called for something like a demolition,
2 which is expensive and creates another financial hurdle to
3 development.

4 Q. What ultimately happened with the 435 Elm Street property
5 during the time you were with the economic development
6 department?

7 A. So ultimately, because of the condition issues, it was
8 a -- quite a large liability that was borne by my department
9 at the time to maintain and upkeep.

10 And in addition to being the subject of litigation
11 between previous tenants and city attorneys, it was kind of an
12 unfunded mandate.

13 The department didn't get budgeted dollars to take care
14 of a failing facility like this, and so it was a drain on very
15 limited resources within the department, and so, ultimately,
16 the property was sold to the port to maintain and hold on to
17 find the -- patiently find the right development partner or
18 entity.

19 Q. And can you describe how that happened, the transfer to
20 the port?

21 A. That was a property sale agreement, and that process
22 would have happened around budget time, again, because it was
23 kind of a two-pronged approach. It was both a budgetary item
24 but also a capacity item, so it happened around the time of
25 the city budget in June.

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1 And at that time, city council -- an item was presented
2 to city council for consideration to sell the property,
3 transfer the property, that is, from the city to the port for
4 one dollar, and after which the port would be responsible for
5 its maintenance, liability, and conditions.

6 Q. Do you recall presenting before the budget and finance
7 committee relating to the transfer of the property from the
8 city to port?

9 A. I don't have specific recollection of that but, yes, I'm
10 sure that I presented during a budget finance committee
11 hearing of some sort during that time.

12 MR. SINGER: Your Honor, we have a stipulation
13 relating to the admissibility of a video.

14 THE COURT: Yes.

15 MR. SINGER: Would you like me to read that
16 stipulation or present it to you?

17 THE COURT: Yes, could you present it to me. Let me
18 just take a look at it. Is this one that I already have?

19 MR. SINGER: You do.

20 THE COURT: Oh, I can pull it up from here, then.
21 Okay. You can read it or I can, either way, Mr. Singer.

22 MR. SINGER: Would you like me to read it, Your
23 Honor?

24 THE COURT: You can.

25 MR. SINGER: "The parties stipulate to the

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1 admissibility of the 1:20 video of Phil Denning's statement
2 before the City of Cincinnati Budget and Finance Committee on
3 June 24th, 2019.

4 "It is further stipulated and agreed that this
5 stipulation may be introduced into evidence as an exhibit, and
6 the facts herein stipulated have the same status, dignity, and
7 effect as the undisputed testimony of a credible witness."

8 THE COURT: Thank you, Mr. Singer.

9 Ladies and gentlemen of the jury, I mentioned at the
10 outset, there may be some facts that are stipulated to. With
11 regard to stipulated facts, you are to accept those stipulated
12 facts as true and proven.

13 MR. SINGER: Your Honor, permission to publish USA 2I
14 to the jury? 2I is the video that reflects the stipulation.

15 THE COURT: Mr. Rittgers, any objection?

16 MR. C. MATTHEW RITTGERS: No, Your Honor.

17 THE COURT: Very good.

18 (Video played.)

19 Q. Do you recall that testimony?

20 A. Yes.

21 Q. There was a reference to Convention Place Mall. What is
22 that a reference to?

23 A. Convention Place Mall is the second name, I guess, for
24 435 Elm. The complex itself is known as Convention Place
25 Mall.

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1 Q. And we just heard it in the recording, but can you
2 describe why it is you recommended the sale of 435 Elm Street
3 for a dollar?

4 A. Yes. Just as I said, it was a liability for the
5 department financially and also legally. And I had forgotten,
6 until I heard that, that because of the large amount of back
7 taxes that the building owed, was delinquent on, it's likely
8 that the port or the land bank would have been involved in a
9 successful redevelopment in any case.

10 Q. And did city council ultimately vote to sell the
11 435 Elm Street property to the port?

12 A. Yes.

13 Q. And were you present during that meeting?

14 A. Yes.

15 Q. Do you recall the date the property was voted on by city
16 council?

17 A. I do not recall.

18 Q. Okay. Do you remember what the city council vote was?

19 A. I recall it was a yes but, other than that, the vote
20 breakdown, I honestly don't recall.

21 Q. Would the minutes of City Hall on the date that the sale
22 was made, would that refresh your recollection?

23 A. Yes.

24 MR. SINGER: Permission to approach, Your Honor?

25 THE COURT: You may.

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1 Q. Can you reference page 1 and page 18, the tab right
2 there?

3 A. Yes. Okay.

4 MR. SINGER: May I approach?

5 THE COURT: You may.

6 Q. Did this refresh your recollection as to the date that
7 city council voted on the transfer?

8 A. Yes. And the votes were yes.

9 Q. Do you recall what the date was?

10 A. I didn't actually look at the date. I'm sorry. I was
11 looking at the number.

12 Q. Can you tell me what the votes were?

13 A. The votes were all yes.

14 Q. Okay. Do you know Mr. P.G. Sittenfeld?

15 A. Voted yes.

16 MR. SINGER: May I approach?

17 THE COURT: You may.

18 A. I apologize. I haven't been following the assignment.

19 Thank you. So June 26th. Thank you.

20 Q. June 26th of what year?

21 A. Of 2019.

22 Q. Thank you. So I think you just testified that the
23 property was ultimately sold to the port for a dollar; is that
24 correct?

25 A. Yes.

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1 Q. Do you recall whether this was the same term that
2 Mr. Ndukwe was seeking with the city in his discussions with
3 the economic development department?

4 A. I do not recall specific terms, actually, of Mr. Ndukwe's
5 as it pertains to the cost or amount of a sale.

6 Q. Okay. And what was the impact of the sale of the
7 property to the port?

8 A. The immediate impact on the city was the removal of a
9 large financial burden, and so that's a significant public
10 benefit.

11 And then since that time, it has been at the port,
12 managed by the port. The tenants were cleared, and it is
13 being kind of prepped for development.

14 Q. At some point after the transfer, did you change jobs
15 from economic development to the port?

16 A. Yes. So it was about five months after this was sold
17 that the idea was first approached of me from Laura Brunner,
18 the CEO of the port, and it was after that, in January of
19 2020, that I started at the port.

20 Q. Okay. After the property was transferred to the port,
21 was there a possibility that it could return back to city
22 council for any reason?

23 A. It would be unlikely for the property itself to transfer
24 it back to the city for any reason, although with the
25 development project, there might be something else that city

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1 council would have had to -- a development incentive, for
2 example, would have had to be considered by city council.

3 Q. That's what I was getting at. Is there some issue
4 relating to the project that could ultimately bring the
5 essence of that issue back to city council?

6 A. Yes. Yes. Ultimately, if the project's found a
7 development proposal that was real and vetted, that if the
8 developer were needed -- were going to need a development
9 incentive like a tax abatement, or something like that, then
10 that item would come back to -- in front of city council
11 related to this property.

12 Q. Was Mr. Ndukwe ultimately able to negotiate a development
13 agreement with the port related to the property?

14 A. No.

15 Q. During the time you were with economic development, do
16 you recall any discussions you had with then Councilman
17 P.G. Sittenfeld regarding the 435 Elm Street project?

18 A. Yes.

19 Q. Can you describe what you recall of those conversations?

20 A. I recall one or two phone conversations with
21 Mr. Sittenfeld that were primarily focused on process for the
22 building, the building's development option.

23 Q. Any specifics about the conversation that you recall?

24 A. It was -- again, it was mainly focused on process and,
25 you know, what is going to -- you know, what are the

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1 department's next steps.

2 For context, you know, in my time at the department, I
3 had instituted an RFP process, request for proposals process,
4 to elicit competitive bids for properties. And we had
5 instituted that and had been using it, and so most of the
6 conversations with Mr. Sittenfeld, I believe, was about that.

7 Q. Do you recall any discussion related to Mr. Ndukwe's
8 interest in the property?

9 A. Yes. Vaguely. My recollection was Mr. Sittenfeld
10 asking, again, about process, and what is the process for
11 Mr. Ndukwe to get control of the property or develop the
12 property.

13 Q. Now, I think you testified that Mr. Ndukwe had some
14 interest in the property; is that correct?

15 A. I wouldn't --

16 Q. Can I ask a different question?

17 A. Yes.

18 Q. How would you describe Mr. Ndukwe's interest in the
19 property?

20 A. At the time, I'm going to have to say I don't recall
21 exactly when he -- Mr. Ndukwe, that is -- had purchased a
22 mortgage cure.

23 But without getting too technical, one of the tenants in
24 the building had defaulted on a mortgage. The mortgage holder
25 had a right to cure that default. And my understanding was

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1 that Mr. Ndukwe had purchased that right to cure the default.

2 And so this topic is, again, subject of litigation today
3 between Mr. Ndukwe and the port, but the interest is -- I
4 don't believe there is an interest.

5 Q. So with that backstop, during the time you were with
6 economic development, was it your perspective that
7 Mr. Ndukwe was going to be the developer of the project based
8 on the relationship he had with 435 Elm Street?

9 A. For clarity, this is at my time at the port?

10 Q. During your time in economic development.

11 A. Oh, in economic development. Yes. My understanding was
12 Mr. Ndukwe had not demonstrated sufficient capacity, finances,
13 or other plans necessary to present a development project to
14 city council.

15 Q. And that was from the perspective of the economic
16 development department; is that correct?

17 A. Yes.

18 MR. SINGER: May I consult?

19 THE COURT: You may.

20 Q. One quick follow-up. You've mentioned a litigation, I
21 believe, relating to the port and Mr. Ndukwe.

22 Does that have anything to do with any criminal charges?
23 Is that a civil matter relating to --

24 A. Yes. My understanding is that is a separate -- that's
25 just a separate matter.

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1 Q. A completely separate civil matter?

2 A. Correct.

3 Q. Not related to the reason you're testifying here today?

4 A. Correct. Yes. Yes. Completely separate.

5 MR. SINGER: No further questions.

6 THE COURT: Thank you, Mr. Singer.

7 Mr. Rittgers your witness.

8 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. C. MATTHEW RITTGERS:

11 Q. Good afternoon, Mr. Denning.

12 A. Hi, there.

13 Q. Now that you've seen that video on the floor of council,
14 you're fairly familiar with the recommendation that you made
15 back then?

16 A. Yes.

17 Q. And, in part, part of the recommendation was because the
18 city was saddled with that property for quite a long time?

19 A. Yes.

20 Q. And it cost the city roughly \$400,000 a year just in
21 maintenance costs, which was draining the budget and finances
22 of the city?

23 A. That's correct.

24 Q. It also was a bit of a hazard for the public, even maybe
25 the tenants, because of the condition of the building?

1 A. Yes, the building, when it was still owned by the City of
2 Cincinnati, had occupants, tenants, tenants and subtenants.
3 And that was a situation which the department wasn't capable
4 or really built to handle.

5 Q. And that's why, ultimately, you stood on the floor and
6 you recommended to council to transfer the building to the
7 Port Authority?

8 A. That's correct.

9 Q. And that would be fairly typical, in your role as the
10 economic development director, to speak to council about what
11 your beliefs were regarding a transfer to the port?

12 A. Yes.

13 Q. And those were -- that was your belief. I mean, those
14 were your beliefs based on what your department and you
15 actually knew about the building?

16 A. That's correct. And --

17 Q. And -- sorry. Go ahead. I apologize.

18 A. No, that's okay. Typically, I would appear to council
19 with information that my staff had presented about a project
20 or such, so yeah.

21 Q. And the dollar transfer to the port was, I think your
22 words were it was a steal for the city, right, the transfer?

23 A. Right. Correct. It was relieving a significant public
24 burden.

25 Q. Because it was costing us, the taxpayers, roughly

1 \$4 million every decade?

2 A. Yes.

3 Q. The costs, just because this property was transferred to
4 the port, given the state it's in today, those don't go away.
5 The port still has costs every day with that property,
6 correct?

7 A. Yes.

8 Q. And the port's mission, where you are now, is to help
9 revitalize, I think you mentioned light industrial jobs, even
10 sometimes residential homes?

11 A. Uh-huh.

12 Q. Commercial buildings like 435 Elm, correct?

13 A. Yes.

14 Q. And this particular building at 435 Elm was strategic, in
15 that it was right across the street from our Convention
16 Center?

17 A. Yes. It is directly south of the Convention Center.

18 Q. And I believe at the time, in 2018, to the east of the
19 Convention Center, there stood a hotel called Millennium?

20 A. Yes.

21 Q. Which is gone. Was this property, was it something that
22 would have been helpful for the port, if there was a
23 successful development agreement, to get a hotel on this
24 property because of where it was located?

25 A. Unfortunately, that's a more complicated answer.

1 Certainly, getting the property developed again would be the
2 best, you know, best-case scenario for the western side of
3 downtown, and the size of the property is fairly small. It
4 looks bigger, but it's kind of an L-shaped property, so a
5 hotel is a potential use. It could have been other uses as
6 well.

7 Q. At the port, were you -- I should ask. Were you
8 personally familiar with any studies done regarding our
9 Convention Center with the Convention Bureau, or anything like
10 that?

11 A. Yeah, vaguely. I'm sure that over the past couple of
12 years, I've read, you know, an HVS study, or something about
13 convention -- hotel convention redevelopment.

14 Q. And, in general terms, we -- Cincinnati's Convention
15 Center competes with other convention centers within, you
16 know, a 150-mile radius?

17 A. Yes.

18 Q. Indianapolis, Louisville, Columbus?

19 A. (Nods affirmatively.)

20 Q. And it's important for a Convention Center to have nice
21 and usable hotel space near the Convention Center, right?

22 A. Yes.

23 Q. And it helps with broader tourism for the region?

24 A. Absolutely. With perception, visitors visiting the
25 convention facility, certainly.

1 Q. Tax base, jobs?

2 A. Yes.

3 Q. I know there's very limited things that you can say
4 because you're at the port, and the property is currently in
5 litigation in state court, civil litigation.

6 The port's position, and correct me if I'm wrong, is that
7 Mr. Ndukwe does not possess air rights; is that right?

8 A. Yes.

9 Q. And his position is that he does possess air rights,
10 correct?

11 A. Honestly, I'm uncomfortable speaking to his position.

12 Q. Okay. There's an argument over whether or not he
13 possesses air rights on that property?

14 A. That's my understanding, yes.

15 Q. You mentioned the defunct mortgage. You said that he
16 purchased a mortgage. Was it from U.S. Bank in 2017?

17 A. That's my understanding, yes, it was from U.S. Bank.

18 Q. If today the port's -- if the port had a good proposal,
19 where someone said they had \$75 million to develop that
20 property, would that be a good thing to try to dive into and
21 successfully complete?

22 A. It seems like the answer would be yes, although my answer
23 would probably be a little more vague than that because I
24 would say that you would probably want to talk to 3CDC, who is
25 managing the redevelopment of the Convention Center district.

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1 But, generally, attracting more private investment to the
2 corner or the district is beneficial, yes.

3 Q. To help revitalize downtown?

4 A. Yes. Yep.

5 Q. Our county and region?

6 A. (Nods affirmatively.)

7 MR. C. MATTHEW RITTGERS: No further questions, Your
8 Honor.

9 THE COURT: Thank you, Mr. Rittgers.

10 Mr. Singer, any redirect?

11 MR. SINGER: Just two brief questions, Your Honor.

12 THE COURT: Very good.

13 REDIRECT EXAMINATION

14 BY MR. SINGER:

15 Q. I think you testified that it was the determination of
16 economic development that, when you were assessing the
17 property, ultimately, you went and determined whether it was
18 in the public interest; is that right?

19 A. Yes.

20 Q. And despite all the issues relating to the property, was
21 it the assessment of economic development at the time that the
22 development agreement pursued by Mr. Ndukwe was not in the
23 public interest?

24 A. That is a fair assessment.

25 MR. SINGER: No further questions.

1 THE COURT: Thank you, Mr. Singer.

2 Mr. Rittgers, any further questions?

3 MR. C. MATTHEW RITTGERS: May I have one moment, Your
4 Honor?

5 THE COURT: You may.

6 MR. C. MATTHEW RITTGERS: I have no further
7 questions, Your Honor. Thank you.

8 THE COURT: Thank you. Sir, you may step down.
9 Thank you for being here today.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 (Excerpt of proceedings concluded at 3:54 p.m.)

13 * * *

14 C E R T I F I C A T E

15 - - -

16 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing
17 is a correct transcript from the record of proceedings in the
18 above-entitled matter.

19 /s/ M. Sue Lopreato
20 M. SUE LOPREATO, RMR, CRR
Official Court Reporter

August 31, 2022

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